IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

CHARTERED ACCOUNTANT REFEREBCE NO. 1 OF 2001

Council of the Institute of
Chartered Accountants of India,
Indraprastha Marg, New Delhi .. Petitioner

v/s.

Shri P.U.Patil, FCA,
Chartered Accountant,
A/54, Shree Mahalaxmi Co-operative
Society Ltd., Veer Desai Road,
Andheri West, Mumbai-400 058. .. Respondent

Dr. Virendra Tulzapurkar, senior counsel with Ms. S. Srikrishna i/by M/s. Kanga & Co. for petitioner.

None for respondent.

Mr.N.D.Salvi for Union of India.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 13th August, 2004

ORAL JUDGMENT (Per R.M.Lodha, J.)

This is a reference under section 21(5) of the Chartered Accountants Act, 1949 (for short "Act of 1949").

2. The respondent Shri P.U.Patil is a chartered accountant and member of the Institute of Chartered Accountants of India. The complaint of professional misconduct was lodged against him by one Shri P.N.Vittal Dass, Additional Collector of Customs, Mumbai (for short "the complainant") before the Council of the Institute of Chartered Accountants of India. The allegations against the respondent were that he had issued false certificates for past exports to several parties

for monetary consideration without verifying any supporting record or documents. On the strength of these false certificates certain unscrupulous importers were able to obtain import licences, effect imports and clear the goods free of duty perpetuating a fraud on government revenue and depriving the government of its legitimate revenue to the tune of several crores of rupees. The respondent in his statement recorded on 5.1.1993 under section 108 of the Customs Act, 1962 confessed to have issued the certificates for monetary consideration and without verification of any supporting documents on record. The Council forwarded the copy of the complaint to the respondent. The respondent did not submit his written statement. The Council was of the prima facie view that respondent was guilty of the professional misconduct and the matter needed to be enquired into and accordingly, referred the case to the disciplinary committee. The committee on perusal of the documents on record and those produced before the committee and after hearing the submissions made by the parties concluded that the respondent was guilty of professional misconduct under clauses 2,7 and 8 of part I of the second schedule of the Chartered Accountants Act, 1949 in terms of sections 21 and 22 of the said Act and forwarded its report to the Council. The Council accepted the report of the disciplinary committee and recommended to this court that the name of the respondent be removed from the register of members for a period of one month. This is how the matter

is before us.

3. There appears to be no dispute that the respondent issued certificate dated 31st March, 1989 to M/s. Orient Impex Corporation certifying the past export on the said firm. The certificate showed that the said M/s. Orient Impex Corporation for the year 1985-86 had an export in the sum of Rs.10,15,450/-, for the year 1986-87 an export in the sum of Rs.14,00,430/ -and for the year 1987-88 an export in the sum of Rs.18,53,310/-, in all for the last three years exported in the sum of Rs.42,69,190/-. It was also not under challenge by the respondent before the disciplinary committee that his statement was recorded under section 108 of the Customs Act. In his statement under section 108, the respondent admitted that one Mr. Dhian Singh brought one certificate typed in the letterhead of M/s. Orient Impex Corporation and also brought one form of certificate to be issued by him on his letterhead. The respondent in his statement under section 108 of the Customs Act admitted that after going through the contents of the certificate he asked Mr. Dhian Singh to show the supporting documents and records. To that, Mr. Dhian Singh told him that the said firm was well known to him and there was no need to verify the records/documents and that he could issue the certificate on his trust and good faith. The respondent used to know Mr. Dhian Singh and therefore, he acceded to the request of Mr. Dhian Singh for which Mr. Dhian Singh paid him Rs.1000/-

in cash. In his statement under section 108, the respondent agreed to have issued two more certificates in the name of M/s. Famous Enterprises and M/s. Universal Enterprises to Mr. Dhian Singh for a consideration of Rs.1000/- each. The respondent's explanation before the disciplinary committee was that his statement under section 108 was not voluntary but was recorded under duress and the third degree method employed by the customs officials. He, however, admitted that at no point of time earlier he had retracted his statement under section 108. In his examination before the disciplinary committee, he admitted that he could not produce any working paper to satisfy the committee that certificates were issued after due verification of records. He admitted that he did not know the proprietors/partners of M/s. Orient Impex Corporation. As a matter of fact, in response to the complaint, the respondent did not file any written statement. Incidentally, we may notice that the Chief Controller of Imports and Exports issued a show-cause notice dated 27.5.1991 under section 4-L of the Imports and Exports (Control) Act, 1947 and under clause 10 of the Imports (Control) Order, 1955 to M/s. Orient Impex Corporation, Park View, Ground Floor, 24th Road, Opp. Rang Mandir, Linking Road, Bandra, Bombay and it was alleged in the said notice that M/s. Orient Impex Corporation obtained an advance licence dated 7.7.89 for Rs.24,50,000/- by misrepresentation of the facts and misutilised the value of imported

goods in contravention of the export obligations and conditions imposed in the advance licence. In the said proceedings, notice was also sent to the present respondent as well at his address at A/54, Shree Mahalaxmi Co-operative Society Ltd., Veer Desai Road, Andheri West, Mumbai. Since the notice sent to him was not returned undelivered, the Chief Controller of Imports and Exports presumed that service of the notice was effected on the respondent. In the said proceedings ultimately, the order was passed by the Chief Controller of Imports and Exports on 19.4.1992 holding therein that the issuance of false certificate to M/s. Orient Impex Corporation resulted in a loss of Rs.81,05,000/- to the Government and a fiscal penalty of Rs.5,00,000/- was imposed upon the present respondent. Copy of this order was sent to the respondent and there is nothing on record to indicate that the said order has been reversed by the appellate authority.

4. Having considered all these aspects, we find ourselves in agreement with the finding of the disciplinary committee and accepted by the Council that the respondent is guilty of professional misconduct under clauses 2,7, and 8 of part I of the second schedule of the Act of 1949 in terms of sections 21 and 22 of the Act.

5. The respondent has not chosen to appear even before us and therefore, looking to the gravity of conduct and applying the test of proportionality,

we find no justifiable ground in not accepting the recommendation of the Council that the name of respondent be removed from the register of members for a period of one month. We, accordingly, dispose of this reference by following order:-

(i) The respondent is held guilty of professional misconduct under clauses 2,7 and 8 of part I of second schedule of the Chartered Accountants Act, 1949 in terms of sections 21 and 22 of the said Act.

(ii) The name of respondent be removed from the register of members of the Institute for a period of one month.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)